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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying parties:

Subject: **Case M.8984 - Hg/Vista/Allocate**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 17 July 2018, the European Commission (the "Commission") received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which HgCapital LLP ("Hg") and Vista Equity Partners ("Vista") acquire within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation joint control over the whole of Allocate Software ("Allocate") by way of purchase of shares (the "Transaction")[3]. Hg and Vista are each a "Notifying Party" and together referred to as the "Notifying Parties". Hg, Vista and Allocate are collectively referred to as "the Parties".

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in the Official Journal of the European Union No C 261, 25.07.2018, p. 16.

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1. THE PARTIES

(2) Hg is a private equity firm which invests mainly in Europe into technology and technology enabled service businesses. With investment offices in London and Munich, Hg manages investments on behalf of over 100 institutional investors including private and public pensions funds and insurance companies. A number of Hg's portfolio companies provide IT services including business software.

(3) Vista is a U.S. based private equity firm that is focused on investments in software, data and technology-enabled businesses led by management teams with long-term perspective.

(4) Allocate is a portfolio company of Vista. Allocate is a provider of workforce and risk management software primarily to the healthcare industry. Its core product is used for workforce rostering and associated compliance workflows such as monitoring and reporting on safe staffing levels.

2. THE CONCENTRATION

(5) The Transaction relates to the acquisition of joint control over Allocate by limited partnerships managed by Hg Pooled Management Limited, a subsidiary of Hg, and Vista.

(6) Allocate is currently solely controlled by Vista, which holds 100% of the shares in Allocate Investor Holdco Limited. Pursuant to an option deed dated 20 April 2018 (the "Option Deed"), Vista granted certain Hg funds a unilateral, non-transferrable and irrevocable option (the "Option") to subscribe for the Company Shares (as defined in the Option Deed) in an amount corresponding up to a 50% shareholding, exercisable during a six-week period following 16 May 2018. On 23 May 2018, Hg exercised the Option. The purchase of the shares is subject to customary regulatory conditions, including the approval by the Commission under the Merger Regulation.

(7) Upon completion of the Transaction, the shareholdings in Allocate Investor Holdco Limited will be as follows:

- Vista (aggregate of funds): 50% ;
- Hg (aggregate of funds): 50%.

(8) [Details on governance rights of Allocate].

(9) The Notifying Parties will also have customary consent rights over key strategic decisions of Allocate, such as [Details on governance rights of Allocate]. These decisions will require the consent of both Notifying Parties prior to being undertaken. Each Notifying Party will enjoy a veto right over the adoption of key strategic decisions.

(10) Therefore, the Transaction will result in the acquisition of joint control by Hg and Vista over Allocate.

(11) Post-Transaction Allocate will be a joint venture performing on a lasting basis all the functions of an autonomous economic entity. In particular, Allocate owns

sufficient resources to operate independently on the market; it will not take over a specific function within the business activities of Vista and/or Hg; it does not and will not in the future rely on substantial sales or purchases between itself and either Hg, Vista or any of their portfolio companies; and it is intended to operate on a lasting basis with no fixed term or duration in the agreements between the parent companies.

(12) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation.

3. EU DIMENSION

(13) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (Hg: EUR […]; Vista: EUR […]; Allocate: EUR 62.69 million). Each of at least two of them has an EU-wide turnover in excess of EUR 250 million (Hg: EUR […]; Vista: EUR […]; Allocate: EUR […]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(14) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Product market definition

(15) The Commission has previously assessed the market for business software[5]. In Oracle/PeopleSoft[6], the Commission noted that the business software market (distinguished from consumer software) could be broadly categorized into infrastructure software and application software. The Commission specified that business application software comprises software programs that address some aspects of planning, execution or collaboration in a business, government or other organization. These applications can in general be divided into (i) personal productivity applications and (ii) enterprise application software ("EAS").

4 Turnover calculated in accordance with Article 5 of the Merger Regulation.

5 M.3216 Oracle / PeopleSoft (2004); M.3978 Oracle / Siebel (2005); M.4944 SAP / Business Objects (2007); M.4987 IBM / Cognos (2008); M.5763 Dassault Systemes / IBM DS PLM Software business (2010).

6 M.3216 Oracle / PeopleSoft (2004).

(16) EAS is a segment of business software that supports the major business functions needed to manage a business effectively at a corporate or branch level, such as managing corporate finances, automating the sales and marketing functions of a company, or managing the resources involved in corporate projects.

(17) The Commission further underlined that industry analysts generally distinguish various categories of EAS. EAS can be further sub-segmented into Enterprise Resource planning ("ERP")[7], Customer Relationship Management ("CRM") and Supply Chain Management ("SCM"). ERP encompasses applications that manage the optimal use of enterprise resources such as employees, assets and finances.[8] While CRM automates customer-facing business functions such as sales, marketing or call centers, SCM automates the planning production and delivering of goods and services.[9]

(18) In turn, ERP encompasses a number of sub-categories. Those sub-categories are human capital management ("HCM") software and Financial Management software ("FMS"). HCM includes applications that automate one or more human resources functions of an enterprise, such as personnel management, benefits administration, payroll, recruiting, employee development (such as training and succession planning) and performance analysis and review. FMS consists of applications allowing companies to maintain their general ledger, balance books, or prepare analytics and reports.[10]

(19) The Notifying Parties take the view that the relevant product market encompasses all EAS solutions because of the significant degree of supply side substitutability from suppliers already operating across the EAS spectrum, such as SAP, Oracle and Salesforce. Moreover, the Notifying Parties submit that there are numerous suppliers that are capable of expanding and diversifying their spectrum including Sage, Microsoft or Workday. Lastly, the Notifying Parties note that barriers to supply side switching are not significant, specifically for small and mid-market customer segments.[11]

(20) The responses to the market investigation in this case did not provide any new elements that would contradict the view of the Parties that there is no need to further subsegment the market of EAS. Given that in some previous Commission decisions, the market of EAS was further sub-segmented, the Commission has also assessed the segment of ERP for the purpose of this decision.[12]

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7 M.3216 Oracle / PeopleSoft (2004).

8 See Form CO, paragraph 79 (a).

9 See Form CO, paragraph 79 (b)-(c).

10 See Form CO, paragraph 79 (b)-(c).

11 See Form CO, paragraph 80.

12 See M.3978 Oracle / Siebel (2005).

(21) However, the relevant product market definition can be left open for the purpose of this Decision as the Transaction does not give rise to serious doubts under any plausible sub-segmentation of the EAS market (namely ERP and HCM where the Parties' activities overlap).

4.2. Geographic market definition

(22) The Commission has previously considered that markets for business software/EAS solutions were at least EEA-wide and possibly worldwide.[13] However, as the Notifying Parties' activities in the UK, Sweden and Denmark appear to be relatively concentrated, the Commission has also assessed these national markets separately for the segments ERP and HCM.[14]

(23) The Notifying Parties take the view that the geographic market for EAS solutions is worldwide.

(24) As stated in (22), in previous Commission decisions, the market for business software or for EAS solutions was at least EEA-wide or possibly worldwide.[15] Overall the responses to the market investigation in this case did not provide any new elements justifying a departure from the Commission's previous decisions.

(25) In any event, the relevant geographic market definition can be left open for the purpose of this Decision as the Transaction does not give rise to serious doubts under any plausible geographic market definition (national, EEA or worldwide) for EAS and its sub-segmentations.

5. COMPETITIVE ASSESSMENT

(26) The Transaction gives rise to horizontal overlaps between the activities of the Parties in the provision of business software, where Allocate and certain portfolio companies of both Hg and Vista are active. Within the business software sector, the horizontal overlaps exist within the market for EAS, and in particular in the ERP segment where Allocate is primarily active.

(27) Within ERP, Allocate's offering falls primarily into the provision of HCM software with a particular focus on solutions for the healthcare industry. None of Hg or Vista portfolio companies focuses almost exclusively on the healthcare industry, with the exception of Greenway Health, which is not active in the EEA.

5.1. Provision of ERP

(28) The Notifying Parties provided market shares on the basis of IDC and Gartner (independent providers of industry data) for ERP at worldwide, EEA and national

13 M.5904 – SAP/SYBASE (2010); M.4944 SAP / Business Objects (2007); and M. 3978 Oracle / Siebel (2005).

14 For more details, please refer to Section 5 below.

15 M.5904 – SAP/SYBASE (2010); M.4944 SAP / Business Objects (2007); and M. 3978 Oracle / Siebel (2005).

level in the Member States where their activities overlap. As shown in Table 1, in the ERP segment, the Parties' combined market shares exceed 20% at worldwide and EEA level, as well as in Denmark, Sweden and the UK.

Table 1: ERP market shares for 2017

	Worldwide	EEA	Denmark	Sweden	UK
Gartner					
Hg	[0-5]%	[10-20]%	[20-30]%	[50-60]%	[5-10]%
Vista	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[20-30]%
Allocate	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[20-30]%***	***[20-30]%***	***[30-40]%***	***[50-60]%***	***[30-40]%***
IDC					
Hg	-	[5-10]%	[10-20]%	[30-40]%	[5-10]%
Vista	-	[5-10]%	[0-5]%	[0-5]%	[10-20]%
Allocate	-	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***-***	***[10-20]%***	***[20-30]%***	***[40-50]%***	***[20-30]%***

Source: Form CO

5.1.1. Notifying Parties' views

(29) The Notifying Parties consider that the horizontal overlap between the Parties on the ERP segment raises no competition concerns.

(30) The Notifying Parties consider that the combined market share of the Parties on the ERP worldwide and EEA-wide market is low and that the market share increment brought by Allocate is *de minimis*.

(31) Additionally, the Notifying Parties submit that no competition concerns arise on the basis of the post-merger HHI and HHI delta at the EEA and worldwide levels.

(32) Further, according to the Notifying Parties Allocate has a particular focus on ERP/HCM solutions for the healthcare industry. Therefore, it does not compete closely with any of Hg or Vista portfolio companies, none of which focuses almost exclusively on the healthcare industry.

(33) Finally, the Notifying Parties submit that their main competitors have considerable shares and will continue to constrain the Notifying Parties and there are a number of large international competitors that could easily increase their market presence further in response to any future hypothetical price increases.

5.1.2. Commission's assessment

5.1.2.1. Worldwide and EEA-wide

(34) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in the market for the provision of ERP, at worldwide and EEA level, for the following reasons:

(35) First, the Notifying Parties' portfolio companies have a combined share of [20-30]% on the worldwide market and [20-30]% on the EEA-wide market based on Gartner data in 2017. Based on the IDC data of the same year, the EEA-wide market shares are at [10-20]%.[16]

(36) Second, the market share increment[17] brought about by the Transaction is only [0-5]% on a worldwide level and [10-20]% in the EEA in 2017 based on the Gartner data and [5-10]% in the EEA based on the IDC data.

(37) Third, ERP is characterised by the presence of a large number of competitors. In the worldwide market for ERP, SAP, Oracle, Workday, Sage, Infor and Microsoft have market shares of [20-30]%, [10-20]%, [5-10]%, [5-10]%, [0-5]% and [0-5]%, respectively. In the EEA, SAP is the market leader with a share of [20-30]%, while Sage, Microsoft, Oracle and Infor have market shares of [10-20]%, [5-10]%, [5-10]% and [0-5]%, respectively.

(38) Fourth, a majority of respondents to the market investigation either expressed a positive or neutral view in relation to the impact of the Transaction on ERP worldwide or in the EEA[18].

5.1.2.2. National level

(39) The Commission further considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in the market for the provision of ERP, at the level of Denmark, Sweden and the UK, for the following reasons:

(40) With regard to Denmark, the Parties have a combined market share in 2017 of [30-40]% based on Gartner data and on [20-30]% based on IDC data. The market share increment brought about by the Transaction is only at [0-5]% for Gartner data and at [0-5]% for IDC data, respectively. Other competitors in ERP in Denmark include Microsoft, SAP, Infor and Oracle, with market shares of [30-40]%, [20-30]%, [0-5]%, and [0-5]%, respectively.

16 IDC data on worldwide level for ERP was not available.

17 Increment being understood as the smallest of either the market shares of Hg (new controlling parent) or the combined market share of Allocate and its existing parent, Vista.

18 Replies to Questionnaire Q1 to market participants of 19 July 2018, question 2. One respondent mentioned that it would have a negative impact in the EEA and clarified that the impact would be mainly on the Nordic market. The Commission has addressed this concern in Section 5.1.2.2.

(41) With regard to the UK, the Notifying Parties have a combined share in ERP of [30-40]% based on Gartner data and on [20-30]% based on IDC data for the business year 2017. The market share increment brought about the Transaction is only at [5-10]% based on Gartner data on [5-10]% based on IDC data. Other competitors in ERP in the UK include Sage, SAP, Oracle, Workday and Microsoft with ERP market shares of [10-20]%, [10-20]%, [10-20]%, [10-20]% and [0-5]% respectively. Each of these competitors has the financial capability and industry expertise to readily expand their offering in the UK opportunistically.

(42) With regard to Sweden, the Parties' combined share for the business year 2017 is [50-60]% based on Gartner data and is [40-50]% in ERP based on IDC data.[19] However, the market share increment brought about by the Transaction in Sweden is only at [5-10]% based on Gartner data and at [0-5]% based on IDC data. The Notifying Parties' main competitors in ERP in Sweden are large and sophisticated international companies. SAP, the European market leader, as well as Unit 4, Infor, Microsoft and Oracle have ERP market shares of [10-20]%, [5-10]%, [0-5]%, [0-5]% and [0-5]% respectively. Each of these competitors have the financial capability and industry expertise to readily expand their offering in Sweden.[20] Moreover, some competitors with sizeable worldwide and European-wide market shares that currently have a smaller presence in Sweden could further expand their […]* in Sweden in ERP. These companies include Workday ([0-5]% Sweden, [0-5]% EEA-wide and [5-10]% worldwide) and Kronos ([0-5]% Sweden, [0-5]% EEA-wide and [0-5]% worldwide). In particular, Workday, a US-based company, has significantly expanded its […]** in Europe in the last 5 years and has increased its market shares of ERP in Sweden fivefold since 2015. [21] Moreover, there is at least one internationally active company which, albeit currently not active in ERP on the Swedish market, is a very strong ERP player in […]*** markets and could easily expand its footprint into Sweden: Sage has a market share of [20-30]% in France and of [10-20]% in the UK in 2017 ([10-20]% EEA, [5-10]% worldwide).

(43) Finally, a majority of respondents to the market investigation either expressed a positive or neutral view in relation to the impact of the Transaction on ERP in the EEA.[22] With regard to the Swedish market, the majority of respondents also had either a positive or neutral view regarding the effects of the Transaction on ERP.[23]

19 The Commission notes that the combined market [should read: share] in previous years has been lower based on Gartner data. In 2015 it has been at [40-50]% and in 2016 it was at [50-60]%.

20 See Section IV. A.1 of the Form CO.

* Should read: activities

** Should read: activities

21 Workday's market share in ERP in Sweden in 2015 was at [0-5]%. See Annex 12 to the Form CO.

*** Should read: neighbouring

22 Replies to Questionnaire Q1 to market participants of 19 July 2018, question 2.

23 Replies to Questionnaire Q1 to market participants of 19 July 2018, question 5. Two respondents raised concerns regarding the effects of the Transaction on the Swedish market including the concern that the Parties' product offering in Sweden may become less specialized. The Commission has addressed these comments in Section 5.1.2.2.

5.2. Provision of HCM

(44) In the HCM segment, the Parties' combined market shares are 20% or more at EEA level, as well as in Denmark, Sweden and the UK. However, the Transaction does not give rise to an affected market at worldwide level.

Table 2: HCM Market shares for 2017

	Worldwide	EEA	Denmark	Sweden	UK
Gartner					
Hg	[0-5]%	[10-20]%	[30-40]%	[40-50]%	[10-20]%
Vista	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Allocate	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Combined	***[5-10]%***	***[20-30]%***	***[30-40]%***	***[50-60]%***	***[20-30]%***
IDC					
Hg	-	[10-20]%	[10-20]%	[30-40]%	[5-10]%
Vista	-	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Allocate	-	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Combined	**-**	***[10-20]%***	***[10-20]%***	***[40-50]%***	***[10-20]%***

Source: Form CO

5.2.1. Notifying Parties' views

(45) The Notifying Parties consider that the horizontal overlap in a hypothetical HCM sub-segment raises no competition concerns for the following reasons:

(46) The Notifying Parties submit that their portfolio companies have low combined market shares on the worldwide and on the EEA-wide market, and Allocate's worldwide and EEA shares represent a *de minimis* market share increment.

(47) Further, the Notifying Parties submit that the post-merger HHI and HHI delta at the EEA-wide and worldwide level confirm that the Transaction does not raise any competition concerns.

(48) Finally, the Notifying Parties submit that their main competitors have larger market shares in the worldwide market and the EEA level.

5.2.2. Commission's assessment

5.2.2.1. Worldwide and EEA-wide

(49) The Commission considers that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market in the market for the provision of HCM, at worldwide and EEA level for the following reasons:

(50) First, the Notifying Parties' portfolio companies have a combined share of only [5-10]% on the worldwide market and [20-30]% on the EEA-wide market based on Gartner data in 2017. Based on the IDC data, the EEA-wide market shares are even lower at [10-20]%.[24]

(51) Second the market share increment brought about by the Transaction is only [0-5]% on a worldwide level and [0-5]% in the EEA in 2017 based on the Gartner data and is at [0-5]% in the EEA based on the IDC data.[25]

(52) Third, the Parties' main competitors have larger market shares. In the worldwide market, SAP, Oracle, Workday and Kronos have market shares of [10-20]%, [10-20]%, [10-20]% and [5-10]% respectively. At the EEA level, SAP is the leading HCM supplier with a market share of [20-30]%, while Oracle, Sage and Workday have substantial market shares of [5-10]%, [5-10]% and [5-10]% respectively.

(53) Fourth, during the market investigation a majority of respondents expressed either a positive or neutral view on the impact of the Transaction on the HCM segment explaining that there are many competitors in the HCM segment. [26]

5.2.2.2. National level

(54) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in the market for the provision of HCM, at the level of Denmark, Sweden and the UK, for the following reasons:

(55) With regard to Denmark, the Parties have a combined market share for HCM in 2017 of [30-40]% based on Gartner data and on [10-20]% based on IDC data. The market share increment brought about by the Transaction is only at [0-5]% for both Gartner and IDC data, respectively. Other competitors in HCM in Denmark include SAP, Microsoft, Oracle and Deltek, with market shares of [30-40]%, [10-20]%, [5-10]%, and [0-5]%, respectively.

24 IDC data on worldwide level for HCM was not available.

25 IDC data on worldwide level for HCM was not available.

26 Replies to Questionnaire Q1 to market participants of 19 July 2018, question 3. One respondent mentioned that it would have a negative impact in the EEA and clarified that the impact would be mainly on the Nordic market. The Commission has addressed this concern in Section 5.2.2.2.

(56) With regard to the UK, the Parties' combined market share in 2017 based on Gartner data is at [20-30]% and at [10-20]% based on IDC data. The market share increment brought about by the Transaction in the UK for HCM is at [5-10]% for Gartner data and at [5-10]% for IDC data, respectively. Other competitors in HCM in the UK include Workday, SAP, Oracle and Sage, with market shares of [20-30]%, [10-20]%, [10-20]%, and [5-10]%, respectively.

(57) With regard to Sweden, the Parties' combined share for the business year 2017 is [50-60]% based on Gartner data and [40-50]% in HCM based on IDC data for the same business year.[27] The market share increment brought about by the Transaction in the Sweden for HCM is at [5-10]% for Gartner data and at [5-10]% for IDC data, respectively. The Notifying Parties' main competitors in HCM in Sweden are large and sophisticated international companies. SAP, Unit 4, Oracle, Workday and Kronos, have market shares of [10-20]%, [5-10]%, [5-10]%, [0-5]% and [0-5]% respectively. Each of these competitors have the financial capability and industry expertise to readily expand their offering in Sweden opportunistically. In particular, Workday, a US-based company, has significantly expanded its […]* in Europe in the last 5 years and has almost quadrupled its market shares of HCM in Sweden since 2015.[28] Moreover, some competitors with sizeable worldwide, European-wide, or […]** regions' market shares that currently have a smaller presence in Sweden could further expand their […]*** in Sweden in HCM. These companies include Microsoft ([0-5]% Sweden, [10-20]% Denmark, [0-5]% EEA-wide and [0-5]% worldwide) and Cornerstone ([0-5]% Sweden, [0-5]% Denmark, [5-10]% in UK, [5-10]% in France). Moreover, at least one internationally active company that is currently not active in HCM on the Swedish market is a strong HCM player in the neighbouring markets and could easily expand its footprint into Sweden: Sage has a market share of [10-20]% in France and of [5-10]% in the UK in 2017 ([5-10]% EEA, [0-5]% worldwide).

(58) Finally, a majority of respondents to the market investigation either expressed a positive or neutral view in relation to the impact of the Transaction on HCM in the EEA.[29] With regard to the Swedish market, the majority of respondents also had either a positive or neutral view regarding the effects of the Transaction on HCM.[30]

27 The Commission notes that the combined market share in previous years has been lower based on Gartner data. In 2015 it has been at [50-60]% and in 2016 it was at [50-60]%.

* Should read: activities

28 Workday's market share in HCM in Sweden in 2015 was at [0-5]%. See Annex 12 to the Form CO.

** Should read: neighbouring

*** Should read: activities

29 Replies to Questionnaire Q1 to market participants of 19 July 2018, question 3. One respondent mentioned that it would have a negative impact in the EEA and clarified that the impact would be mainly on the Nordic market. The Commission has addressed this concern in Section 5.2.2.2.

30 Replies to Questionnaire Q1 to market participants of 19 July 2018, question 6. One respondent raised concerns regarding the effects of the Transaction on the Swedish market for HCM stating that the new entity may become "too dominant". The Commission has addressed the concerns of dominance at Section 5.2.2.2.

6. CONCLUSION

(59) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER Member of the Commission